

**Introduced by Senators Johnson, Aanestad, Ackerman, Ashburn,
Battin, Brulte, Denham, Knight, Margett, McClintock,
McPherson, Morrow, Oller, and Poochigian**

February 19, 2003

An act to amend Section 3208.3 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 366, as introduced, Johnson. Psychiatric injuries: compensation: proof.

Existing law provides for the compensation under the workers' compensation laws of workers suffering a psychiatric injury, if the employee establishes, by a preponderance of the evidence, specified matters.

This bill would, instead, require proof by clear and convincing evidence of specified matters in order to establish a psychiatric injury, including, among others, proof that the mental disorder arose out of and in the course of employment.

This bill would also require proof by clear and convincing evidence, rather than a preponderance of the evidence, as to specified matters where the claim for compensation for a psychiatric injury occurring prior to the time of notice of termination or layoff is filed after notice of termination of employment or layoff, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3208.3 of the Labor Code is amended to read:

3208.3. (a) ~~A psychiatric injury shall be compensable if it~~
Notwithstanding any other provision of this division, no compensation may be paid for a psychiatric injury unless the employee demonstrates by clear and convincing evidence that all of the following conditions are met:

(1) ~~The injury is a mental disorder which~~ *that* causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, ~~Third—Fourth~~ Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(2) *The mental disorder arose out of and in the course of employment pursuant to Section 3600.*

(3) *The employment condition producing the mental disorder exists in a real and objective sense.*

(4) *Employment events that are sudden and extraordinary, not common to all fields of employment, and not generally inherent in the employee's regular and routine employment are the predominant cause of the mental disorder. As used in this section, "sudden and extraordinary" employment event does not include a disciplinary, corrective, or job performance evaluation action by the employer, or a transfer, layoff, or cessation of employment.*

(b) ~~(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.~~

~~(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.~~

1 ~~(3) For the purposes of this section, “substantial cause” means~~
2 ~~at least 35 to 40 percent of the causation from all sources~~
3 ~~combined.~~

4 ~~(e)~~ It is the intent of the Legislature in enacting this section to
5 establish a new and higher threshold of compensability for
6 psychiatric injury under this division.

7 ~~(d)~~

8 (c) Notwithstanding any other provision of this division, no
9 compensation shall be paid pursuant to this division for a
10 psychiatric injury related to a claim against an employer unless the
11 employee has been employed by that employer for at least six
12 months. The six months of employment need not be continuous.
13 This subdivision shall not apply if the psychiatric injury is caused
14 by a sudden and extraordinary employment condition. Nothing in
15 this subdivision shall be construed to authorize an employee, or his
16 or her dependents, to bring an action at law or equity for damages
17 against the employer for a psychiatric injury, where those rights
18 would not exist pursuant to the exclusive remedy doctrine set forth
19 in Section 3602 in the absence of the amendment of this section by
20 the act adding this subdivision.

21 ~~(e)~~

22 (d) Where the claim for compensation is filed after notice of
23 termination of employment or layoff, including voluntary layoff,
24 and the claim is for ~~an~~ a psychiatric injury occurring prior to the
25 time of notice of termination or layoff, no compensation ~~shall~~ may
26 be paid unless the employee demonstrates by a preponderance of
27 ~~the clear and convincing~~ evidence that actual events of
28 employment were predominant as to all causes combined of the
29 psychiatric injury and one or more of the following conditions
30 exist:

31 (1) Sudden and extraordinary events of employment were the
32 cause of the injury.

33 (2) The employer has notice of the psychiatric injury under
34 Chapter 2 (commencing with Section 5400) of Part 4 prior to the
35 notice of termination or layoff.

36 (3) The employee’s medical records existing prior to notice of
37 termination or layoff contain evidence of treatment of the
38 psychiatric injury.

1 (4) ~~Upon~~ *There has been* a finding of sexual or racial
2 harassment by any trier of fact, whether contractual,
3 administrative, regulatory, or judicial.

4 (5) Evidence that the date of injury, as specified in Section 5411
5 or 5412, is subsequent to the date of the notice of termination or
6 layoff, but prior to the effective date of the termination or layoff.

7 ~~(f)~~

8 (e) For purposes of this section, an employee provided notice
9 pursuant to Sections 44948.5, 44949, 44951, 44955, ~~44955.6,~~
10 ~~44955.5,~~ 72411, 87740, and 87743 of the Education Code shall be
11 considered to have been provided a notice of termination or layoff
12 only upon a district's final decision not to reemploy that person.

13 ~~(g)~~

14 (f) A notice of termination or layoff that is not followed within
15 60 days by that termination or layoff shall not be subject to the
16 provisions of this subdivision, and this subdivision shall not apply
17 until receipt of a later notice of termination or layoff. The issuance
18 of frequent notices of termination or layoff to an employee shall
19 be considered a bad faith personnel action and shall make this
20 subdivision inapplicable to the employee.

21 ~~(h)~~

22 (g) No compensation under this division shall be paid by an
23 employer for a psychiatric injury if the injury was substantially
24 caused by a lawful, nondiscriminatory, good faith personnel
25 action. The burden of proof shall rest with the party asserting the
26 issue.

27 ~~(i)~~

28 (h) When a psychiatric injury claim is filed against an
29 employer, and an application for adjudication of claim is filed by
30 an employer or employee, the division shall provide the employer
31 with information concerning psychiatric injury prevention
32 programs.

33 ~~(j)~~

34 (i) An employee who is an inmate, as defined in subdivision (e)
35 of Section 3351, or his or her family on behalf of an inmate, shall
36 not be entitled to compensation for a psychiatric injury except as
37 provided in subdivision (d) of Section 3370.